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SENATE

{ REPORT
No. 1116

ADJUDICATION OF CLAIMS OF ASSINIBOINE INDIANS BY COURT OF CLAIMS

FEBRUARY 3 (calendar day, FEBRUARY 14), 1925.—Ordered to be printed

Mr. HARRELD, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany H. R. 7687]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 7687) conferring jurisdiction upon the Court of Claims to hear, examine, adjudicate, and enter judgment in any claims which the Assiniboiné Indians may have against the United States, and for other purposes, report favorably thereon with the recommendation that the bill do pass with the following amendments:

Strike out all of section 1 after the enacting clause and insert in lieu thereof, the following:

That all claims of whatsoever nature which the Assiniboiné Indian Nation or Tribe may have against the United States, which have not heretofore been determined by a court of competent jurisdiction, may be submitted to the Court of Claims for determination of the amount, if any, due said Indians from the United States under any treaty or agreement or law of Congress, or for the misappropriation of any of the property or funds of said Indians, or for the failure of the United States to administer the same in conformity with any treaty or agreement with the said Indians: *Provided*, That if in any claim submitted hereunder a treaty or an agreement with the Indians be involved, and it be shown that the same has been amended or superseded by an act or acts of Congress, the court shall have authority to determine whether such act or acts have violated any property right of the claimants, and if so, to render judgment for the damages resulting therefrom; and jurisdiction is hereby conferred upon said Court of Claims, with the right of appeal to the Supreme Court of the United States by either party, to hear and determine all legal and equitable claims of whatsoever nature which said Indians may have against the United States, it being the intent of this act to allow the said Court of Claims full and complete authority to adjust and determine all claims submitted hereunder so that the rights, legal and equitable, both of the United States and of said Indians may be fully considered and determined and to render judgment thereon accordingly.

Strike out all of section 3 and insert in lieu thereof the following:

That if any claim or claims be submitted to said court it shall determine the rights of the parties thereto, notwithstanding lapse of time or statutes of limita-

tion, and any payment which may have been made by the United States upon any claim so submitted shall not be pleaded as an estoppel, but may be pleaded as a set-off in any suit; and the United States shall be allowed credit subsequent to the date of any law, treaty, or agreement under which the claim arises, for any sum or sums, heretofore paid or expended for the benefit of said Indians, if legally chargeable against that claim.

Strike out section 4 and insert in lieu thereof the following:

That if it be determined by the court that the United States, in violation of the terms and provisions of any law, treaty, or agreement, has unlawfully appropriated or disposed of any money or other property belonging to the Indians, damages therefor shall be confined to the value of the money or other property at the time of such appropriation or disposal, together with interest thereon at 5 per cent per annum from the date thereof; and with reference to all claims which may be the subject matter of the suits herein authorized, the decree of the court shall be in full settlement of all damages, if any, committed by the Government of the United States and shall annul and cancel all claim, right, and title of the said Assiniboiné Indians in and to such money or other property.

Strike out section 5 and insert in lieu thereof the following:

SEC. 5. That upon final determination of any suit or suits instituted under this act, the Court of Claims shall have authority to decree such amount or amounts as it may find reasonable, to be paid the attorney or attorneys employed by the Indians as herein provided, which fee or fees shall not exceed 10 per cent of any recovery made, and in no case more than \$50,000, and shall be paid out of the judgment. All actual and necessary expenses incurred in the prosecution of said suit by the attorney or attorneys so employed shall be paid by the Secretary of the Treasury, as they arise, out of the funds standing to the credit of said Indians in the Treasury of the United States upon first being allowed by said Court of Claims and certified to the Secretary of the Interior.

Add the following section, to be section 8 of the bill:

The proceeds of all amounts, if any, recovered for said Indians shall be deposited in the Treasury of the United States to the credit of the Indians decreed by said court to be entitled thereto, and shall draw interest at the rate of 5 per cent per annum from the date of the judgment or decree. The costs incurred in any suit hereunder shall be taxed against the losing party; if against the United States, such costs shall be included in the amount of the judgment or decree, and if against said Indians, shall be paid by the Secretary of the Treasury out of the funds standing to their credit in the Treasury of the United States.

The report of the Secretary of the Interior on this measure is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, April 15, 1924.

HON. HOMER P. SNYDER,
Chairman Committee on Indian Affairs,
House of Representatives.

MY DEAR MR. SNYDER: This will refer to your letter of April 5, 1924, requesting a report on H. R. 7687, which, if enacted, would authorize the Assiniboiné Indians to submit alleged claims against the United States to the Court of Claims for adjudication.

On September 17, 1851, the treaty referred to in Eleventh Statutes at Large, page 749, and printed in Kappler's Laws and Treaties, volume 2, second edition, page 594, was entered into at Fort Laramie, Wyoming Territory, with the Sioux and other tribes of Indians, including the Assiniboinés. The treaty as signed was ratified by the Senate with an amendment changing the annuity provided in article 7 thereof from 50 to 10 years, subject to acceptance by the tribes. The tribes later assented to the amendment, and while the treaty was never formally proclaimed, Congress has recognized it by making appropriations to carry it into effect and the Indians parties thereto have accepted the benefits so provided.

By the treaty mentioned a tract of land in the northeastern part of Montana between the Missouri and Yellowstone Rivers and the forty-seventh and forty-eighth parallels of north latitude and a small adjoining tract in the present State of North Dakota was recognized as the territory of the Assiniboinés.

By article 4 of the treaty dated October 17, 1855 (11 Stat. L. 657), with the Blackfeet Nation the Assiniboinés were granted the privilege of hunting in common with the Blackfeet in a territory reserved by the treaty last mentioned as a common hunting ground.

Under the provisions of the act of April 15, 1874 (18 Stat. L. 28), the Assiniboinés who were then residing with the Blackfeet Nation were permitted to make their home on the reservation set aside by this act and allowed to share with the other Indians. Executive order of April 13, 1875, added to the diminished reservation for the Blackfeet Indians, including the Assiniboinés, a large tract in eastern Montana, which by the Fort Laramie treaty of September 17, 1851, supra, had been recognized as belonging in part to the Assiniboinés.

It will be seen that while the Assiniboinés did not formally cede the territory recognized as theirs by the treaty of 1851, they abandoned such territory, joined the Blackfeet Nation, and participated in the benefits secured thereto by the treaty of 1855, by the act of April 15, 1874, and by the agreement of 1887 ratified by the act of May 1, 1888 (25 Stat. L. 129). Since that time they have shared in the lands set apart by the agreement mentioned for the Indians of the Fort Belknap and Fort Peck Reservations, Mont., and the proceeds derived therefrom.

While the Assiniboinés have, as indicated, been provided for on the two reservations last mentioned, equally with the other Indians thereof, they believe that they have just claims against the Government for lands once recognized as belonging to them and never formally relinquished by the treaty or agreement. As the Indians will probably never feel satisfied until this matter is judicially determined, this department would have no objection to the enactment of H. R. 7687, provided it be amended as follows:

After the word "Nation," page 3, line 3, strike out all to the end of line 6, page 3, and substitute the following:

"And the United States shall be allowed credit for any and all payments including gratuities made to or for the benefit of the Assiniboiné Indians."

Strike out all of section 5 of the bill and substitute the following:

"That upon final determination of any suit or suits instituted under this act the Court of Claims shall have authority to decree such amount or amounts as it may find reasonable to be paid the attorney or attorneys employed by the Indians as herein provided, which fee or fees shall not exceed 10 per cent of any recovery made, and in no case shall they amount in the aggregate to more than \$25,000, and shall be paid out of the judgment."

Strike out the words "or all persons," in line 25, page 3, and insert in lieu thereof the following: "other tribe or band of Indians."

Very truly yours,

E. C. FINNEY, *Acting Secretary.*

By article 1 of the treaty dated October 17, 1855 (11 Stat. 1, 537), with the Blackfoot Nation the Assiniboes were granted the privilege of hunting in common with the Blackfoot in a territory reserved by the treaty last mentioned as a common hunting ground.

Under the provisions of the act of April 16, 1874 (18 Stat. 1, 32), the Assiniboes and were then residing with the Blackfoot Nation were permitted to make their home on the reservation set aside by the act and allowed to share with the other Indians. Executive order of April 13, 1875, added to the diminished reservation for the Blackfoot Indians, including the Assiniboes, a large tract in eastern Minnesota which by the Fort Totten treaty of September 17, 1881, was recognized as belonging in part to the Assiniboes.

It will be seen that while the Assiniboes did not formally cede the territory reserved within by the treaty of 1855, they abandoned such territory, joined the Blackfoot Nation, and participated in the benefits derived there by the treaty of 1855 in the act of April 15, 1874, and by the agreement of 1881, although by the act of May 7, 1882 (22 Stat. 1, 129) it was then they have shared in the lands set apart in the agreement mentioned for the Indians of the Fort Totten and Fort Totten Reservations. More and the proceeds derived therefrom.

While the Assiniboes have participated, both provided for on the two reservations last mentioned, equally with the other Indians thereof, they believe that their just claims against the Government for lands once reserved as belonging to them and never formally relinquished by the treaty or agreement of 1881, will probably never be satisfied until this matter is judicially determined. This objection would have no objection to the amendment of H. R. 7627, provided it be amended as follows:

After the word "Nation," page 2, line 3, strike out all to the end of line 6, and insert the following:

"And the United States shall be allowed credit for any and all payments including interest made to or for the benefit of the Assiniboe Indians, strike out all of section 5 of the bill and substitute the following:

"That upon final determination of any suit or suits instituted under this act the Court of Claims shall have authority to decree and award or amounts as the law may require to be paid the attorney or attorneys employed by the Indians as herein provided, which fee or fees shall not exceed 10 per cent of any recovery made and in no case shall they exceed in the aggregate for more than \$25,000 and shall be paid out of the Treasury."

Strike out the words "or all persons" in line 25, page 3, and insert in lieu thereof the following: "other tribe or band of Indians."

E. C. KIRK, Deputy Secretary.